

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKFORCE INVESTMENT
(502) 564-7456

POLICY NAME: WORKFORCE INNOVATION AND OPPORTUNITY ACT - INTERLOCAL AGREEMENTS, CHIEF LOCAL ELECTED OFFICIAL AND LOCAL ELECTED OFFICIAL ROLES AND RESPONSIBILITIES

POLICY NUMBER: 15-002
DATE OF ISSUE: revised November 1, 2021
EFFECTIVE DATE: November 1, 2021

APPLIES /OF INTEREST TO: Local Workforce Development Boards (LWDBs), Local Workforce Development Area (LWDA) staff, Chief Local Elected Officials (CLEOs) and Local Elected Officials (LEOs)

POINT OF CONTACT: Compliance.unit@ky.gov

HISTORY: initially issued March 4, 2015; revised March 31, 2017 with additions related to the designation of CLEO(s), updated CLEO responsibilities to be outlined in the Interlocal Agreement, removal of a 65% majority for specific actions, and LWDB certification of One Stop Operator; reissued November 30, 2020 with no substantive change (cleanup); revised November 1, 2021 with removal of requirement to procure fiscal agent (approved via DWI Memorandum dated February 12, 2021), requisite to file Interlocal Agreement with Secretary of State and minor changes as cleanup.

PURPOSE: This policy serves to provide guidance and clarification to LWDA's relating to the Interlocal Agreement process and related roles and responsibilities under WIOA.

BACKGROUND: The Workforce Innovation and Opportunity Act (WIOA) of 2014 (Public Law 133-128, July 22, 2014) enacted by the Congress of the United States, provides for federal funds to be granted to states, and for each state's Governor to designate LWDA within the state for the delivery of services and programs under the Act. WIOA Section 107 and 20 CFR 679 subpart C provide guidance and direction on the role of the CLEO(s) and LEOs in the LWDA as designated by the Governor. DWI issuances provide support and clarification to the Act.

Realizing that local employment and training programs cannot be fully effective or implemented without intergovernmental coordination because such programs and their implementation cross government, department, agency and political jurisdictions, LEOs shall enter into a written Interlocal Agreement. It is the purpose of the Kentucky Interlocal Cooperation Act, KRS 65.210 to 65.300, to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

POLICY:

Interlocal Agreement -- In Kentucky, an Interlocal Agreement is required for each LWDA. As noted in WIOA Section 107(c)(1)(B), when a LWDA includes more than one unit of general local government, the CLEOs of such units may execute an agreement that specifies the respective roles of the CLEO(s): (I) In the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under subsection (b); and (II) In carrying out any other responsibilities assigned to such officials under this title. If after a reasonable effort, the CLEOs are unable to reach agreement as provided under clause (i), the Governor may appoint the members of the local board from individuals so nominated or recommended.

The above is applicable except in such area designated as a Concentrated Employment Program, which in accordance with WIOA §107(c)(1)(C), *was designated as a local area in accordance with section 116(a)(2)(B) of the Workforce Investment Act of 1998 (as in effect on the day before the date of enactment of this Act), and that remains a local area on that date.* In such event, the governing body of the concentrated employment program involved shall act in consultation with the chief elected official [CLEO] in the local area to appoint members of the local board, in accordance with the State criteria established under subsection (b), and to carry out any other responsibility relating to workforce investment activities assigned to such official under this Act.

All LEOs in a workforce area shall enter into an agreement that determines how LWDB nominees will be selected, appointed, removed or reappointed. The process must be documented in the Interlocal Agreement. The LEOs shall enter into an Interlocal Agreement as a requirement to appoint the LWDB.

In addition to the Interlocal Agreement, the LEOs also shall enter into a Partnership Agreement with the LWDB. The Interlocal Agreement and the Partnership Agreement which are the two governing documents must be consistent. The requirement for consistency applies to any item that is addressed in both governing documents. Both agreements are dynamic documents that can, and should, be amended when a need or desire arises and the respective signatories agree.

Interlocal Agreement Required Inclusions. LEOs must enter into an agreement with each other that, at a minimum, include the following sections:

(1) **Purpose of the Agreement.** Describe the purpose and the term of the Interlocal Agreement (not to exceed five years).

(2) **Designation of a Chief Local Elected Official.** CLEO(s) are required by WIOA to approve or provide guidance on a number of LWDB activities. Therefore, the Commonwealth requires LEOs to select a CLEO who will act on behalf of the other LEOs OR note agreement of all LEOs to act as CLEOs in unison and to include the following information in the Interlocal Agreement:

a) Selection/appointment process and term of the CLEO(s), which must include steps to ensure that his/her/their duties would not create or be perceived to create a conflict of interest between the consortium of LEOs, LWDB, fiscal agent and/or administrative entity; and if applicable, a designation to serve as signatory for the LEOs;

- c) Outline the process by which CLEO(s) will appoint members to the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under WIOA Section 107(b), 20 CFR 679.320-360 and this policy;
- d) Outline how CLEO(s) will partner with the local board to create a local plan required by WIOA Section 107 (d)(1) and for program oversight as outlined in WIOA Section 107(d)(8);
- e) Outline any criteria by which CLEO(s) shall agree to local board activity in WIOA Section 107 (d)(10) and (12);
- f) Outline the criteria by which CLEO(s) shall agree to a local board's request to provide career services or service as a one-stop operator; and
- g) Name, title, and contact information of appointed CLEO(s).

To avoid conflict of interest, CLEO(s) shall not serve as the highest-ranking officer on any Board or other entity that governs the fiscal agent or service delivery provider.

(3) Participating Local Elected Officials. The agreement must contain the name, representation, contact information and signature of each LEO in the local area. The Interlocal Agreement shall require a governing board of LEOs and bylaws and shall not be administratively attached to the fiscal agent, grant subrecipient, one-stop operator, or service provider.

(4) Dispute Resolution. The Interlocal Agreement must state how disputes among LEOs will be resolved regarding LWDB board appointments and carrying out other responsibilities under WIOA.

(5) Fiscal Agent or Grant Subrecipient Designation. CLEO(s) may designate an entity to serve as the local fiscal agent or local grant subrecipient for WIOA funds. Such designation shall not relieve the CLEO(s) of the primary liability for any misuse of grant funds. The CLEO(s)' liability may be apportioned among all of the LEOs in the Interlocal Agreement.

(6) Grant Recipient/Liability of Funds. The Interlocal Agreement must indicate the CLEO(s)' acknowledgement of financial liability as noted in WIA 107(d)(12)(B)(i)(I) and outline the process for determining each LEO's share of responsibility. This determination could be based on allocation, population, expenditures, or other criteria determined by the LEOs. The Interlocal Agreement must contain a detailed process for reconciling disallowed costs. In most cases, liability for costs which are recommended for disallowance and which are not resolved, rest with the entity responsible for incurring the cost. In the event the entity responsible cannot or will not assume the liability, the Interlocal Agreement must provide the process on how funds will be reimbursed.

(7) Local Area Service Delivery Provider. As authorized in WIOA Section 107(g)(2), 20 CFR 679.410(a) and (b), and 20 CFR 678.610, a LWDB may provide career services described in WIOA Section 134(c)(2) through a one-stop delivery system or be designated or certified as a one-stop operator only with the agreement of the CLEO(s) and the Governor. See WIOA Policy regarding LWDB Member Nomination Guidelines, DWI Confirmation Process and Board Certification by the (effective 7/1/2015) for conditions to obtain the Governor's consent including a competitive procurement.

In cases where the LWDB does not seek to provide career services, WIOA Section 121(d)(2) states that to be eligible to receive funds under this subtitle to operate a one-stop center, an entity (which may be a

consortium of entities) shall be designated or certified as a one-stop operator through a competitive process. This process shall be conducted by the LWDB and the one-stop operator shall be designated or certified by the LWDB with agreement of the CLEO(s) in accordance with WIOA Section 107(d)(10).

(8) **Communication.** Describe the process and procedures the CLEO(s) will utilize to keep the LEOs informed regarding LWDB activities. Determine how many times a year the LEOs will meet and how often a joint meeting with the LWDB will be held.

(9) **LWDB Budget Approval.** Describe the process for reviewing and approving the LWDB annual budget by the CLEO(s) (WIOA Section 107(d)(12)(A)).

(10) **LWDB Member Representation.** Outline how LEOs will ensure LWDB representation is fair and equitable across the LWDA and in accordance with WIOA Policy regarding LWDB Member Nomination Guidelines and DWI Policy 15-001. Describe the process for determining the initial size of the LWDB and for selecting, appointing, removing or reappointing LWDB members. Describe the process to determine the terms of office for Board members. LWDB appointments do not require the signature of all the LEOs, but rather only the signature of the designated CLEO(s) is required, as stated in the Interlocal Agreement.

(11) **Selection of a New Chief Local Elected Official.** When a new CLEO is selected in accordance with the Interlocal Agreement, the newly selected CLEO must submit to the LWDB and the DWI, a written statement acknowledging that he/she:

- a) Has read, understands and will comply with the current Interlocal Agreement; and
- b) Apprises DWI of the change in CLEO designation.

(12) **Election of a New Local Elected Official.** When a new LEO is elected within the LWDA, the newly elected official must submit to the LWDB a written statement acknowledging that he or she:

- a) Has read, understands, and will comply with the current Interlocal Agreement; and
- b) Reserves the option to request negotiations to amend the Interlocal Agreement at any time during the official's tenure as a LEO.

(13) **Amendment or Change to the Interlocal Agreement.** Outline the process to be used for amendments or changes to the Interlocal Agreement. Amendments must be submitted to the LWDB, and the Department of Local Government for approval. Upon approval revised agreements shall be filed with the Secretary of State and a final copy submitted to DWI via the POC listed herein. However, provided that the terms of the agreement are not being substantively changed, whenever an existing agreement that complies with the requirements of KRS 65.210 to 65.300 is amended solely to join new parties or to remove existing parties, approval of the Department for Local Government shall not be required for the amendment to be effective (KRS 65.242).

(14) **Single County Local Areas.** If any single county local area is designated, the LEO shall execute a written agreement that specifies his or her liability in accordance with WIOA.

(15) **Interlocal Agreement KRS requirements.** Upon completion of the Interlocal Agreement and all LEO signatures have been recorded on the Interlocal Agreement approved by each governing body, the

Agreement shall be sent to the Department for Local Government for approval in accordance with the provisions of KRS 65.210 through 65.300.

Upon final approval by the Department for Local Government, the final document shall be filed with the Secretary of State and a final copy submitted to DWI via the POC listed herein.

REFERENCE:

- Workforce Innovation and Opportunity Act (WIOA) of 2014 (Public Law 133-128, July 22, 2014)
 - 20 CFR 679.410(a) and (b)
 - 20 CFR 678.610
 - 20 CFR 679 subpart C
 - DWI Confirmation Process and Board Certification (effective 7/1/2015)
 - The Kentucky Interlocal Cooperation Act, KRS 65.210 through 65.300.
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